

HB0374S01 compared with HB0374

~~{deleted text}~~ shows text that was in HB0374 but was deleted in HB0374S01.

inserted text shows text that was not in HB0374 but was inserted into HB0374S01.

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Representative Ken Ivory proposes the following substitute bill:

SENSITIVE MATERIALS IN SCHOOLS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill prohibits certain sensitive instructional materials in public schools.

Highlighted Provisions:

This bill:

- ▶ defines certain instructional materials as sensitive materials;
- ▶ prohibits sensitive materials in a public school;
- ▶ ~~{grants parents the right to file a civil action to enforce}~~ requires the State Board of Education (state board) to, in consultation with the Office of the Attorney General, provide guidance and training to public schools on identifying sensitive materials;
- ▶ requires the state board to report to the Education Interim Committee and the Government Operations Interim Committee on implementation and compliance with the certain provisions;

HB0374S01 compared with HB0374

- ▶ defines terms; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53E-4-202, as last amended by Laws of Utah 2021, Chapters 84 and 345

53E-4-403, as last amended by Laws of Utah 2019, Chapter 186

~~{ **63G-7-301**, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365~~

ENACTS:

53G-10-103, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53E-4-202** is amended to read:

53E-4-202. Core standards for Utah public schools.

(1) (a) In establishing minimum standards related to curriculum and instruction requirements under Section 53E-3-501, the state board shall, in consultation with local school boards, school superintendents, teachers, employers, and parents implement core standards for Utah public schools that will enable students to, among other objectives:

- (i) communicate effectively, both verbally and through written communication;
- (ii) apply mathematics; and
- (iii) access, analyze, and apply information.

(b) Except as provided in this public education code, the state board may recommend but may not require a local school board or charter school governing board to use:

- (i) a particular curriculum or instructional material; or
- (ii) a model curriculum or instructional material.

(2) The state board shall, in establishing the core standards for Utah public schools:

(a) identify the basic knowledge, skills, and competencies each student is expected to acquire or master as the student advances through the public education system; and

HB0374S01 compared with HB0374

(b) align with each other the core standards for Utah public schools and the assessments described in Section 53E-4-303.

(3) The basic knowledge, skills, and competencies identified pursuant to Subsection (2)(a) shall increase in depth and complexity from year to year and focus on consistent and continual progress within and between grade levels and courses in the basic academic areas of:

(a) English, including explicit phonics, spelling, grammar, reading, writing, vocabulary, speech, and listening; and

(b) mathematics, including basic computational skills.

(4) Before adopting core standards for Utah public schools, the state board shall:

(a) publicize draft core standards for Utah public schools on the state board's website and the Utah Public Notice website created under Section 63A-16-601;

(b) invite public comment on the draft core standards for Utah public schools for a period of not less than 90 days; and

(c) conduct three public hearings that are held in different regions of the state on the draft core standards for Utah public schools.

(5) LEA governing boards shall design their school programs, that are supported by generally accepted scientific standards of evidence, to focus on the core standards for Utah public schools with the expectation that each program will enhance or help achieve mastery of the core standards for Utah public schools.

(6) Except as provided in ~~[Section]~~ Sections 53G-10-103 and 53G-10-402, each school may select instructional materials and methods of teaching, that are supported by generally accepted scientific standards of evidence, that the school considers most appropriate to meet the core standards for Utah public schools.

(7) The state may exit any agreement, contract, memorandum of understanding, or consortium that cedes control of the core standards for Utah public schools to any other entity, including a federal agency or consortium, for any reason, including:

(a) the cost of developing or implementing the core standards for Utah public schools;

(b) the proposed core standards for Utah public schools are inconsistent with community values; or

(c) the agreement, contract, memorandum of understanding, or consortium:

(i) was entered into in violation of Chapter 3, Part 8, Implementing Federal or National

HB0374S01 compared with HB0374

Education Programs, or Title 63J, Chapter 5, Federal Funds Procedures Act;

(ii) conflicts with Utah law;

(iii) requires Utah student data to be included in a national or multi-state database;

(iv) requires records of teacher performance to be included in a national or multi-state database; or

(v) imposes curriculum, assessment, or data tracking requirements on home school or private school students.

(8) The state board shall submit a report in accordance with Section 53E-1-203 on the development and implementation of the core standards for Utah public schools, including the time line established for the review of the core standards for Utah public schools by a standards review committee and the recommendations of a standards review committee established under Section 53E-4-203.

Section 2. Section **53E-4-403** is amended to read:

53E-4-403. Commission's evaluation of instructional materials --

Recommendation by the state board.

(1) Semi-annually after reviewing the evaluations of the commission, the state board shall recommend instructional materials for use in the public schools.

(2) The standard period of time instructional materials shall remain on the list of recommended instructional materials shall be five years.

(3) Unsatisfactory instructional materials may be removed from the list of recommended instructional materials at any time within the period applicable to the instructional materials.

(4) Except as provided in ~~[Section]~~ Sections 53G-10-103 and 53G-10-402, each school shall have discretion to select instructional materials for use by the school. A school may select:

(a) instructional materials recommended by the state board as provided in this section;

or

(b) other instructional materials the school considers appropriate to teach the core standards for Utah public schools.

Section 3. Section **53G-10-103** is enacted to read:

53G-10-103. Sensitive instructional materials.

HB0374S01 compared with HB0374

(1) As used in this section:

(a) (i) "Instructional material" means a material, regardless of format, used:

(A) as or in place of textbooks to deliver curriculum within the state curriculum framework for courses of study by students; or

(B) to support a student's learning in the school setting.

(ii) "Instructional material" includes reading materials, handouts, videos, digital materials, websites, online applications, and live presentations.

(b) "LEA governing board" means:

(i) for a school district, the local school board;

(ii) for a charter school, the charter school governing board; or

(iii) for the Utah Schools for the Deaf and the Blind, the state board.

(c) "Material" means the same as that term is defined in Section 76-10-1201.

(d) "Minor" means any person less than 18 years old.

~~{ (e) "Nudity" means the same as that term is defined in Section 76-10-1201.~~

{ ~~(f)~~ (e) "Public school" means:

(i) a district school;

(ii) a charter school; or

(iii) the Utah Schools for the Deaf and the Blind.

~~(g)~~ (f) (i) "School setting" means, for a public school:

(A) in a classroom;

(B) in a school library; or

(C) on school property.

(ii) "School setting" includes the following activities that an organization or individual or organization outside of a public school conducts, if a public school or an LEA sponsors or requires the activity:

(A) an assembly;

(B) a guest lecture;

(C) a live presentation; or

(D) an event.

~~(h)~~ (g) (i) "Sensitive material" means an instructional material that:

(A) contains a drawing, depiction, or image of:

HB0374S01 compared with HB0374

(I) actual or simulated sexual conduct; or

(II) sexually explicit conduct;

(B) contains a discussion, description, or representation of:

(I) sexual conduct, including sexual conduct involving a minor; or

(II) sexually explicit conduct~~}; or~~.

~~{ (C) contains gratuitous use of vulgar, profane, or obscene language.~~

~~† (ii) "Sensitive material" does not include instructional materials:~~

(A) that an LEA selects under Section 53G-10-402;

(B) for medical courses;

(C) for family and consumer science courses; or

(D) for another course the state board exempts in state board rule.

(~~h~~) "Sexual conduct" means the same as that term is defined in Section 76-10-1201.

(~~i~~) "Sexually explicit conduct" means the same as that term is defined in Section

76-5b-103.

(2) (a) Sensitive materials are prohibited in the school setting.

(b) A public school may not:

(i) adopt, use, distribute, provide a student access to, or maintain in the school setting, sensitive materials; or

(ii) permit a speaker or presenter in the school setting to display or distribute sensitive materials.

(3) ~~{A parent of a student enrolled in the public school may file a civil action against the LEA to enforce Subsections (2)(a) and (b) if:~~

~~_____ (a) at least 30 days before filing a civil action as described in this Subsection (3), the parent provides written notice to the LEA governing board that describes the alleged violation; and~~

~~_____ (b) after receiving the notice described in Subsection (3)(a), the public school does not remove the}~~ The state board shall:

(a) in consultation with the Office of the Attorney General, provide guidance and training to support public schools in identifying instructional materials that meet the definition of sensitive ~~{material from the school setting.~~

~~_____ (4) If a parent prevails in a civil action the parent files under Subsection (3), the LEA is~~

HB0374S01 compared with HB0374

liable to the parent for:

~~_____ (a) damages in the amount of \$10,000 per violation; materials under this section; and~~

~~_____ (b) reasonable attorney fees.~~

~~_____ Section 4. Section **63G-7-301** is amended to read:~~

~~_____ **63G-7-301. Waivers of immunity:**~~

~~_____ (1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.~~

~~_____ (b) Actions arising out of contractual rights or obligations are not subject to the requirements of Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.~~

~~_____ (c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.~~

~~_____ (2) Immunity from suit of each governmental entity is waived:~~

~~_____ (a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;~~

~~_____ (b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;~~

~~_____ (c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;~~

~~_____ (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;~~

~~_____ (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;~~

~~_____ (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees~~

HB0374S01 compared with HB0374

Act;

~~— (g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;~~

~~— (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:~~

~~— (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or~~

~~— (ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement;~~

~~— (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment; and~~

~~— (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:~~

~~— (i) against a student of a public elementary or secondary school, including a charter school; and~~

~~— (ii) by an employee of a public elementary or secondary school or charter school who:~~

~~— (A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;~~

~~— (B) is criminally charged in connection with the sexual battery; and~~

~~— (C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402;~~

~~— (3) (a) As used in this Subsection (3):~~

~~— (i) "Code of conduct" means a code of conduct that:~~

~~— (A) is not less stringent than a model code of conduct, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);~~

~~— (B) is adopted by the applicable local education governing body;~~

HB0374S01 compared with HB0374

- ~~_____ (C) regulates behavior of a school employee toward a student; and~~
- ~~_____ (D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph:~~
- ~~_____ (ii) "Local education agency" means:~~
 - ~~_____ (A) a school district;~~
 - ~~_____ (B) a charter school; or~~
 - ~~_____ (C) the Utah Schools for the Deaf and the Blind.~~
- ~~_____ (iii) "Local education governing board" means:~~
 - ~~_____ (A) for a school district, the local school board;~~
 - ~~_____ (B) for a charter school, the charter school governing board; or~~
 - ~~_____ (C) for the Utah Schools for the Deaf and the Blind; } report to the Education Interim Committee and the Government Operations Interim Committee, at or before the November 2022 interim meeting, on implementation and compliance with this section, including:~~
 - (i) any policy the state board or an LEA adopts to implement or comply with this section; and
 - (ii) any rule the state board ~~};~~
 - ~~_____ (iv) "Public school" means a public elementary or secondary school;~~
 - ~~_____ (v) "School setting" means the same as that term is defined in Section 53G-10-103.~~
 - ~~_____ (vi) "Sensitive material" means the same as that term is defined in Section 53G-10-103.~~
 - ~~_____ [(v)] (vii) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2);~~
 - ~~_____ [(vi)] (viii) "Sexual battery" means the offense described in Section 76-9-702.1;~~
- ~~_____ considering the term "child" in that section to include an individual under age 18:~~
- ~~_____ (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:~~
 - ~~_____ (i) at the time of the sexual battery or sexual abuse, the public school was subject to a code of conduct; and~~
 - ~~_____ (ii) before the sexual battery or sexual abuse occurred, the public school had:~~
 - ~~_____ (A) provided training on the code of conduct to the employee; and~~

HB0374S01 compared with HB0374

~~_____ (B) required the employee to sign a statement acknowledging that the employee has read and understands the code of conduct.~~

~~_____ (c) Immunity from suit is waived as to a claim against a local education agency for a violation of Subsections 53G-10-103(2)(a) and (b), unless:~~

~~_____ (i) a public school removes sensitive material from the school setting after the public school receives the written notice described in Subsection 53G-10-103(3)(a); or~~

~~_____ (ii) a parent does not provide the written notice described in Subsection 53G-10-103(3)(a);~~

~~_____ (4) (a) As used in this Subsection (4):~~

~~_____ (i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102;~~

~~_____ (ii) "Policy governing behavior" means a policy adopted by a higher education institution or the Utah Board of Higher Education that:~~

~~_____ (A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);~~

~~_____ (B) regulates behavior of a special trust employee toward a subordinate student;~~

~~_____ (C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and~~

~~_____ (D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph;~~

~~_____ (iii) "Sexual battery" means the offense described in Section 76-9-702.1;~~

~~_____ (iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student;~~

~~_____ (v) "Subordinate student" means a student:~~

~~_____ (A) of a higher education institution; and~~

~~_____ (B) whose educational opportunities could be adversely impacted by a special trust employee;~~

~~_____ (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:~~

HB0374S01 compared with HB0374

~~—— (i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:~~

~~—— (A) with a subordinate student who was at least 18 years old at the time of the behavior; and~~

~~—— (B) with the student's consent; or~~

~~—— (ii) (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and~~

~~—— (B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.~~

~~‡ makes to implement or comply with this section.~~